



NEW HANOVER COUNTY

DEPARTMENT OF PLANNING & LAND USE

230 Government Center Drive, Suite 110

Wilmington, North Carolina 28403

Telephone (910) 798-7165

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planningdevelopment.nhcgov.com

REASONABLE ACCOMMODATION APPLICATION

This application form must be completed as part of an application to appeal an administrative decision submitted through the county's online COAST portal. The main procedural steps in the submittal and review of applications for text amendments are outlined in the flowchart below. More specific submittal and review requirements, as well as the standards to be applied in reviewing the application, are set out in Section 10.3.13 of the Unified Development Ordinance.



1. Applicant and Property Owner Information

Applicant/Agent Name OXFORD HOUSE SHOWMAN	Owner Name (if different from Applicant/Agent) JAVARAH JOSEPH
Company	Company/Owner Name 2 MARY JOSEPH
Address 314 SILVA TERRA DRIVE	Address PO BOX 61214
City, State, Zip WILMINGTON, NC, 28412	City, State, Zip RALEIGH, NC, 27661
Phone 910-742-9284	Phone 828-237-1008
Email SHOWMAN@oxfordhouse.us	Email JOSEPH.enterprise@yahoo.com



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2. Subject Property Information

Address/Location 314 SILVA TERRA DRIVE	Parcel Identification Number(s) R07020-010-011-000
Total Parcel(s) Acreage 0.36	Summary of Special Exception Requested: SEE Attached Statement of Justification.

3. Request for Special Exception

In the space below, please describe the request for the reasonable accommodation, including the provisions of the Unified Development Ordinance for which the accommodation is being requested. Applicants are advised to demonstrate how the reasonable accommodation request

- Will be used by an individual or individuals with a disability or handicap protected under federal law;
- Is the minimum needed to provide accommodation; and
- Is reasonable and necessary.

Please attach additional pages if necessary.

SEE Attached Statement of Justification

Staff will use the following checklist to determine the completeness of your application. Please verify all of the listed items are included and confirm by initialing under "Applicant Initial". Applications determined to be incomplete must be corrected in order to be processed for further review.

Application Checklist

Applicant Initial

- This application form, completed and signed
- Any supporting documentation
- One hard copy of ALL documents. Additional hard copies may be required by staff depending on the size of the document/site plan
- One digital PDF copy of ALL documents.

JG

JG

JG

JG

4. Acknowledgement and Signatures

By my signature below, I understand and accept all of the conditions, limitations, and obligations of the reasonable accommodation for which I am applying. I certify that this application is complete and that all information presented in this application is accurate to the best of my knowledge, information, and belief.

If applicable, I also appoint the applicant/agent as listed on this application to represent me and make decisions on my behalf regarding this application during the review process. The applicant/agent is hereby authorized on my behalf to:

1. Submit an application including all required supplemental information and materials;
2. Appear at public hearings to give representation and comments; and
3. Act on my behalf without limitations with regard to any and all things directly or indirectly connected with or arising out of this application.

[Handwritten Signature]

Signature of Property Owner(s)

Jonathan Joseph

Print Name(s)

[Handwritten Signature]

Signature of Applicant/Agent

JONATHAN GUIDO

Print Name

STATEMENT OF JUSTIFICATION

Oxford House, Inc. requests a Special Exception from Section 63.11:1 of the County Zoning Ordinance, which section limits the number of disabled persons that may live in a group home to six.

Specifically, Oxford House requests that eight disabled men be allowed to live at the Oxford House located at 314 Silva Terra Drive in Wilmington. The house itself is a single-family detached home, 2088 square foot home, with 5 bedrooms and 2 full baths. The home has driveway parking.

New Hanover County's zoning ordinance defines Oxford Houses as a "group homes" pursuant to the definition of same in the ordinance. Further, the residents of Oxford House are defined as "disabled persons" pursuant to the definition of same in the ordinance.

WHAT IS AN OXFORD HOUSE

Oxford Houses are homes for persons recovering from alcoholism and or drug addiction, who are no longer using alcohol or drugs. Oxford House is a self-run, self-supported recovery home concept and standardized system of operation that served as the model for the self-run, self-supported group recovery homes authorized for start-up loans under the Federal Anti-Drug Abuse Act of 1988. This legislation required each state to set aside \$100,000 in a revolving loan fund to make loans to recovering addicts and alcoholics to assist in the establishment of housing that is financially self-supported, democratically run, and immediately expels anyone who relapses.

Many of over three thousand Oxford Houses in the United States were started with loans pursuant to this Act through contracts with state governments. Most of the over three hundred Oxford Houses in North Carolina were started with loans pursuant to this Act through an ongoing

contract with the State of North Carolina. Since 1990, the State of North Carolina, through the Department of Health and Human Services, has entered into annual contracts with Oxford House, Inc., the umbrella organization of the national network of Oxford Houses, to help establish and assist in the maintenance of a statewide network of Oxford Houses.

Each Oxford House is chartered by Oxford House, Inc., a 501(c)(3) nonprofit umbrella organization. Three basic conditions are required to obtain a charter: 1). The house must be democratically self-run following the standard system of operation set forth in the Oxford House Manual; 2). The house must be financially self-supporting by the individual residents paying equal shares of household expenses in a timely manner, and; 3). The house must immediately expel any resident who returns to using alcohol or drugs inside or outside of the house.

Oxford House, Inc.'s by-laws preclude it or its chartered houses from owning residential property, thus all Oxford Houses are rented. A group wanting to start an Oxford House behaves in the household rental market just like an ordinary family. It finds an available, suitable house and rents it by paying the first month's rent and security deposit to a willing landlord. Usually, these funds come from the above referenced start-up loans. Oxford House residents are encouraged to rent single family dwellings in good neighborhoods.

The houses operate autonomously, but must follow the procedures in the Oxford House Manual and adhere to the conditions of its charter. Each Oxford House has its own bank account. There are no dues or fees to Oxford House, Inc. by individual houses, but having a charter gives the houses technical assistance and support by Oxford House, Inc., including defense of the civil rights of every Oxford House.

Oxford Houses are not substance abuse centers or halfway houses. No treatment, counseling, therapy, or any kind of health care is provided. There is no house manager, paid staff,

Palatine, 37 F.3d 1230 (7th Cir. 1994); *United States (on behalf of Oxford House) v. Village of Audubon*, 797 F. Supp. 353, aff'd without opinion, 968 F.2d 14 (3d Cir. 1992); *Oxford House, Inc. v. Town of Babylon*, 819 F. Supp. 1179 (E.D.N.Y. 1993); *Oxford House v. Township of Cherry Hill*, 799 F. Supp. 450 (D.N.J. 1992); *Oxford House-Evergreen v. City of Plainfield*, 769 F. Supp. 1197 (D.N.J. 1991), and; *Tsombanidis, and Oxford House, Inc. v. City of West Haven, Connecticut*, 180 F. Supp. 262 (Ct. 2001).

As members of a protected class under the FHA, Oxford Houses are protected against discriminatory zoning practices. As such, the issue of whether an Oxford House is in violation of local zoning ordinances is not relevant to the question of federal law. See *United States (on behalf of Oxford House) v. Village of Audubon*, supra. The FHA prohibits discriminatory land use decisions by local governments, even when such decisions are “ostensibly authorized by local ordinance.” See *Oxford House Evergreen v. City of Plainfield*, supra; also 42 U.S.C. Section 3615 (“any law of a State, a political subdivision, or other jurisdiction that purports to require or permit any action that would be a discriminatory housing practice under this subchapter shall to that extent be invalid under the Fair Housing Act”).

The aforementioned prohibition under the FHA against zoning discrimination by local governments includes the requirement that local governments make reasonable accommodations in their zoning ordinances to allow the operation of Oxford Houses. Specifically, 42 U.S.C. 3604(f)(3)(B), defines discrimination to include a “refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such handicapped person equal opportunity to use and enjoy a dwelling.” See *Oxford House v. City of St. Louis*, supra; *Oxford House v. City of Plainfield*, supra; *Oxford House v. Township of Cherry Hill*, supra, and; *Oxford House, Inc. v. Town of Babylon*, supra. The County’s zoning ordinance

is ostensibly a means for the County, through its BOA, to provide the required reasonable accommodation.

The Section 63 of the County Zoning Ordinance follows federal law by requiring a reasonable accommodation when the request is both reasonable and necessary as each is defined in the law and set forth in Section 63.1 of the ordinance. Specifically, the ordinance defines reasonable and necessary as follows:

1. “Reasonable”. An accommodation will be determined reasonable if it would not undermine the legitimate purposes and effects of the existing zoning regulations, and if it would not impose significant financial and administrative burdens upon the County and/or constitute a substantial or fundamental alteration of the County’s ordinance provisions; and
2. “Necessary”. An accommodation will be determined necessary if it would provide direct or meaningful therapeutic amelioration of the effects of the particular disability or handicap, and would afford handicapped or disabled persons equal opportunity to enjoy and use housing in residential districts of the County.

Under Section 63.1 of the ordinance, upon the finding that the request by Oxford House is reasonable and necessary as defined above, the BOA shall grant the requested exception to allow 8 persons to live at 314 Silva Terra Drive. The reasonableness and necessity as to Oxford House at 314 Silva Terra Drive are set forth below.

REQUEST IS REASONABLE

No Burden

There is no evidence of any financial or administrative burden on the County by the existence of the Oxford House. In fact, the Oxford House will provides a free benefit to the County

by providing housing and aiding in the recovery of those recovering from alcoholism and drug addiction.

Zoning Scheme Not Undermined or Fundamentally Altered

The Oxford House does not undermine the purposes of the County's zoning ordinance. The ordinance expressly allows for this type of housing. The ordinance also allows for this type of housing at this particular location. Further, the ordinance was recently amended to provide for an exception or reasonable accommodation for the request made herein. The ordinance itself is proof that the Oxford House does not undermine the County's ordinance or fundamentally alter its zoning scheme. There are other Oxford Houses in the County in similar zoning districts, and none have undermined or fundamentally altered the County's zoning scheme.

REQUEST IS NECESSARY

Therapeutically Beneficial

By its very nature the Oxford House model's therapeutic benefit is derived solely from its residents. As described above, in an Oxford House there are no counselors, managers, care providers or outside personnel that provide any therapeutic services. Oxford Houses are not like traditional group homes, halfway houses, or family care homes - all of which have managers and provide some services to their residents. In such traditional homes a lesser number of residents will not have any therapeutic impact. Not so in an Oxford House. The quality of the relationship among the residents in an Oxford House is one of mutual support and bonding, providing an ameliorative therapeutic benefit which aids each resident in their recovery from alcoholism or drug addiction. As a result of this therapeutic benefit, those living in an Oxford House are more likely to remain clean and sober than those living on their own.¹

¹ DePaul University study that followed 897 residents in 219 Oxford Houses across the country for 27 months found that only 13% relapsed. A peer-reviewed published report of that study in Addictive

The average number of residents in an Oxford House in North Carolina is eight (8). The average vacancy rate for Oxford Houses in North Carolina is one (1), meaning that with an allowed maximum capacity of 8, the Oxford House at 314 Silva Terra Drive will usually have just 7 residents. If the house is not granted the requested exception, then it would be limited to 6 residents. With the average vacancy rate, a 6 person Oxford House would usually have only 5 residents. As set forth above the oxford House model requires a minimum of 6 residents at all time to hold all required offices (president, vice president, secretary, treasurer, comptroller, and coordinator). A house that falls below six residents on a regular basis can lose its charter from Oxford House, Inc. Without the requested accommodation/exception, the Oxford House 314 Silva Terra Drive would be put in jeopardy of failing for lack of enough residents. Failure of the house means it would close, causing its residents to lose their home and support in their recovery. Invariably some would relapse. Relapse could be permanent and fatal. The ameliorative therapeutic benefit of the requested exception here is a threshold, make or break degree of amelioration.

An Equal Opportunity to Use and Enjoy Housing of Their Choice

Finally, the Oxford House at 314 Silva Terra Drive will be home to its residents. The requested accommodation/exception provides the residents an equal opportunity to use and enjoy housing of their choice².

Behaviors 32 (2007) can be downloaded at the Oxford House, Inc. website under "Publications/Evaluations/DePaul." In another study 150 individuals getting out of primary treatment were divided into two groups of 75 each with one group going to Oxford Houses and the other group going to normal living situations, each group was followed for two years after treatment and the Oxford House group did substantially better in staying clean and sober – 66% v. 33%. American Journal of Public Health, Oct 2006; Vol. 96, pp1727–1729.

² The County's ordinance falls short of what federal law requires as to equal opportunity. The law requires not just an equal opportunity to enjoy and use housing "in residential districts in the County", but requires equal opportunity for disabled person to enjoy and using housing *of their choice*. Several courts

Without the requested accommodation the house would close as noted above. Closing of the house cause some residents to relapse, with potentially fatal consequences as noted above. Additionally, finding another house to rent to potentially relocate the Oxford House would be extremely difficult. Finding landlords willing to rent to Oxford House is difficult because of the stigma of alcoholism and drug addiction, the fear of zoning problems, neighbor ignorance and opposition, and finally because Oxford House requires long-term leases into which many landlords simply will not often enter.

have held the FHA protects the rights of disabled persons to use and enjoy the particular dwelling of their choice. See, e.g., *Hovson's, Inc. v. Township of Brick*, 89 F.3d 1096, 1103-06 (3rd Cir. 1996); *United States v. City of Jackson*, 318 F.Supp.2d 395, 416 (S.D. Miss. 2002) (FHA "guarantee[s] that the disabled be afforded equal opportunity to live, not in some residence in the community, but rather in the residence of their choice"); *ARC of New Jersey, Inc. v. State of New Jersey*, 950 F. Supp. 637, 645 (D. N.J. 1996) ("Such ceiling quotas [imposed via group home spacing rules] improperly limit the ability of handicapped persons 'to live in the residence of their choice in the community,' House Report at 24, even if imposed in the name of integration or 'declustering'"); *Oxford House, Inc. v. Town of Babylon*, 819 F. Supp. 1179, 1185 n.10 (E.D. N.Y. 1993) (FHA "dictates that a handicapped individual must be allowed to enjoy a particular dwelling, not just some dwelling somewhere in the town"); *Oxford House-Evergreen v. City of Plainfield*, 769 F. Supp. 1329, 1344 (D. N.J. 1991) (defense based on existence of alternative locations in the city for group home held "without merit").